

# Exhibit 3

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## RULES OF CIVIL PROCEDURE

## Civil Procedure Rule 6: Time

## EFFECTIVE DATE:

12/01/2023

## UPDATES:

Amended July 20, 2021, effective September 1, 2021 (488 Mass.

1401) (<https://www.mass.gov/doc/amendments-to-mass-rules-of-civil-procedure-effective-september-1-2021/download>)Amended November 2, 2023, effective December 1, 2023 (<https://www.mass.gov/media/2681751/download>)

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## (a) Computation

In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute or rule, the day of the act, event, or default after which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. As used in this rule and in [Rule 77\(c\)](/rules-of-civil-procedure/civil-procedure-rule-77-courts-and-clerks#-c-filing-date-of-all-papers-received-by-clerk) (</rules-of-civil-procedure/civil-procedure-rule-77-courts-and-clerks#-c-filing-date-of-all-papers-received-by-clerk>), "legal holiday" includes those days specified in [Mass. G.L. c. 4, § 7](https://www.mass.gov/info-details/mass-general-laws-c4-ss-7) ([/info-details/mass-general-laws-c4-ss-7](https://www.mass.gov/info-details/mass-general-laws-c4-ss-7)) and any other day appointed as a holiday by the President or the Congress of the United States or designated by the laws of the Commonwealth.

## (b) Enlargement

When by these rules or by a notice given thereunder or by order or rule of court an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order; or (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect; or (3) permit the act to be done by stipulation of the parties; but it may not extend the time for taking any action under

**Rules 50(b)** (/rules-of-civil-procedure/civil-procedure-rule-50-motion-for-a-directed-verdict-and-for-judgment#-b-motion-for-judgment-notwithstanding-the-verdict), **52(b)**

(/rules-of-civil-procedure/civil-procedure-rule-52-findings-by-the-court#-b-courts-other-than-district-court-amendment), **59(b)**

(/rules-of-civil-procedure/civil-procedure-rule-59-new-trials-amendment-of-judgments#-b-time-for-motion), **(d)**

(/rules-of-civil-procedure/civil-procedure-rule-59-new-trials-amendment-of-judgments#-d-on-initiative-of-court),

and **(e)** (/rules-of-civil-procedure/civil-procedure-rule-59-new-trials-amendment-of-judgments#-e-motion-to-alter-or-amend-a-judgment),

and **60(b)** (/rules-of-civil-procedure/civil-procedure-rule-60-relief-from-judgment-or-order#-b-mistake-inadvertence-excusable-neglect-newly-discovered-evidence-fraud-etc-), except to the extent and under the conditions stated in them.

## (c) For motions-affidavits

A written motion, other than one which may be heard ex parte, and notice of the hearing thereof shall be served not later than 7 days before the time specified for the hearing, unless a different period is fixed by these rules or by order of the court. Such an order may for cause shown be made on ex parte application. When a motion is supported by affidavit, the affidavit shall be served with the motion; and, except as otherwise provided in **Rule**

**59(c)** (/rules-of-civil-procedure/civil-procedure-rule-59-new-trials-amendment-of-judgments#-c-time-for-serving-affidavits), opposing affidavits may be served not later than 1 day before the hearing, unless the court permits them to be served at some other time.

## (d) Additional time after service by mail (Effective until December 1, 2023)

Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other papers upon him and the notice or paper is served upon him by mail, 3 days shall be added to the prescribed period.

## (d) Additional time after mail or electronic service (Effective December 1, 2023)

Whenever a party has the right or is required to do some act within a prescribed period after the service of a notice or other papers upon the party and the notice or paper is served upon the party by mail, by e-mail pursuant to **Rule 5(b)(1)** (/rules-of-civil-procedure/civil-procedure-rule-5-service-and-filing-of-pleadings-and-other-papers), or otherwise electronically, including through the Electronic Filing Service Provider pursuant to **Rule**

**7(b)**

(/supreme-judicial-court-rules/massachusetts-rules-of-electronic-filing-rule-7-service-of-electronically-filed-documents#-b-electronic-service-accomplished-through-the-electronic-filing-service-provider-convention; of the Massachusetts Rules of Electronic Filing, three (3) days shall be added to the prescribed period.

## (e) Additional time after electronic service (Effective until December 1, 2023)

Whenever parties have the right or are required to do some act or take some proceedings within a prescribed period after the service of a notice or other papers upon them and the notice or paper is served upon them electronically, through the Electronic Filing Service Provider pursuant to Rule 7(b) of the Massachusetts Rules of Electronic Filing or otherwise, three (3) days shall be added to the prescribed period.

## Reporter's notes

**(2023) (Effective December 1, 2023)** Rule 6 was amended in 2023 with the adoption of e-mail service as a recognized method to serve documents under **Rule 5** (/rules-of-civil-procedure/civil-procedure-rule-5-service-and-filing-of-pleadings-and-other-papers). See 2023 Reporter's Notes to Rule 5.

The amendment deleted Rule 6(e), which had been added in 2021 to provide an additional 3 days to respond to a document that was served electronically, and relocated its provisions to revised Rule 6(d). Under revised Rule 6(d), 3 days are added to any time period where a party must act after having been served by mail, by e-mail, or through the court's Electronic Filing Service Provider.

The words "or take some proceedings," which had appeared in Rules 6(d) and (e), have been stricken from revised Rule 6(d) in an attempt to simplify the rule since it seemed redundant. No change in meaning was intended.

In the course of amending Rule 6, non-substantive stylistic changes were also made.

**(2021)** In light of the adoption of the Massachusetts Rules of Electronic Filing (Mass. R. E. F.) (Supreme Judicial Court Rule 1:25, effective September 1, 2018), Rule 6(e) has been added to provide for an additional three days to respond or to take action after a document has been served electronically, similar to the additional three days applicable after service by mail (Rule 6(d)). This three-day period is set forth in Mass. R. E. F. 7(e). The additional three-day period applies whether the document is served using the court's e-filing system or using some other method of electronic service, such as e-mail if the parties have agreed in writing to service by e-mail. See Rule 5(b), as amended in 2021.

**(1996)** Prior to the merger of the District Court Rules into the Massachusetts Rules of Civil Procedure, the District Court version of Rule 6(b) contained no reference to Rule 50(b) regarding motions for judgment notwithstanding the verdict. This difference has been eliminated in the merged set of rules.

(1973) Rule 6(a) does not significantly alter Massachusetts law. G.L. c. 4, § 9 (<https://malegislature.gov/Laws/GeneralLaws/PartI/TitleI/Chapter4/Section9>) provides:

"Except as otherwise provided, when the day or the last day of the performance of any act, including the making of any payment or tender of payment, authorized or required by statute or by contract, falls on Sunday or a legal holiday, the act may, unless it is specifically authorized or required to be performed on Sunday or on a legal holiday, be performed on the next succeeding business day."

At the common law, if the limited time was less than a week, Sundays were excluded in calculating the time. Cunningham v. Mahan (<http://masscases.com/cases/sjc/112/112mass58.html>), 112 Mass. 58 (1873); Stevenson v. Donnelly (<http://masscases.com/cases/sjc/221/221mass161.html>), 221 Mass. 161, 108 N.E. 926 (1915). If however, the time limit exceeded one week, Sundays were included in the calculation of the time, even where the last day for doing the act fell on a Sunday. Haley v. Young (<http://masscases.com/cases/sjc/134/134mass364.html>), 134 Mass. 364 (1883).

Rule 6(a) liberalizes the common law, excluding not only Sundays but Saturdays and legal holidays as well, and slightly liberalizes G.L. c. 4, § 9 (<https://malegislature.gov/Laws/GeneralLaws/PartI/TitleI/Chapter4/Section9>) by excluding holidays.

G.L. c. 4, § 9 (<https://malegislature.gov/Laws/GeneralLaws/PartI/TitleI/Chapter4/Section9>) extends the expiration date of a statute of limitations from a Sunday to the following Monday. See Smith v. Pasqualetto ([http://scholar.google.com/scholar\\_case?case=3905114889620423513](http://scholar.google.com/scholar_case?case=3905114889620423513)), 246 F.2d 765 (1st. Cir. 1957). Federal Rule 6(a) has been held to extend a federal statute of limitations where the last day fell on a Sunday. See Rutledge v. Sinclair Refining Co., 13 F.R.D. 477 (S.D.N.Y.1953).

With certain exceptions, Rule 6(b) permits the court to extend the time for doing acts required under the Rules. The exceptions are governed by the language of the specific applicable rules:

50(b) – a motion for judgment notwithstanding the verdict;

52(b) – motion to amend findings;

59(b) – motion for a new trial;

59(d) – new trial on court's initiative;

59(e) – motion to alter or amend a judgment;

60(b) – a motion for relief from a judgment.

Rule 6(b) applies: (a) where the time period has already expired, as well as (b) where the time period has not expired, although in the former situation the failure to act within the time period must have been the result of excusable neglect.

Rule 6(b) does not change Massachusetts practice. The power of the courts in Massachusetts to allow extension of time applies also to permission for late filing. See Whitney v. Hunt-Spiller Mfg. Corp. (<http://masscases.com/cases/sjc/218/218mass318.html>), 218 Mass. 318, 105 N.E. 1054 (1914); Prunier v. Schulman (<http://masscases.com/cases/sjc/261/261mass417.html>), 261 Mass. 417, 158 N.E. 785 (1927); Hill v. Trustees of Glenwood Cemetery (<http://masscases.com/cases/sjc/323/323mass388.html>), 323 Mass. 388, 82 N.E.2d 238 (1948).

Federal Rule 6(c) was rescinded in 1966 and is not included in Rule 6. Rules 6(c) and 6(d) are the same as Federal Rules 6(d) and 6(e). They do not substantially affect prior law.

## Downloads

Massachusetts Rules of Civil Procedure (<https://www.mass.gov/doc/massachusetts-rules-of-civil-procedure/download>) (English, PDF 2.41 MB)

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